

MINERAL LIFE CORP.

IBLA 83-950

Decided May 30, 1984

Appeal from decision of Utah State Office, Bureau of Land Management, declaring mining claims null and void ab initio. U MC 235139 through U MC 235186.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Oil Shale: Withdrawals -- Withdrawals and Reservations: Effect of

Mining claims located for trace minerals on land previously withdrawn from mineral entry by Exec. Order No. 5327, as to nonmetalliferous minerals, and Public Land Order No. 4522, as to metalliferous minerals, are properly declared null and void ab initio.

APPEARANCES: Fred J. Bacon, Jr., president, Mineral Life Corporation, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Mineral Life Corporation has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated August 24, 1983, declaring the Trace Mineral #1 through #48 lode mining claims, U MC 235139 through U MC 235186, null and void ab initio.

Appellant's mining claims were located in December 1980 in Juab and San Pete Counties, Utah, and filed for recordation with BLM on February 18, 1981, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). In its August 1983 decision, BLM declared appellant's mining claims null and void ab initio because they were located "entirely on lands segregated from mining location by Executive Order 5327 and Public Land Order 4522."

In Exec. Order No. 5327, dated April 15, 1930, the President temporarily withdrew, subject to valid existing rights, lands containing deposits of oil shale "from lease or other disposal." The order further provided that the withdrawal would "continue in full force and effect unless and until revoked by the President or by act of Congress." *Id.* In Public Land Order No. (PLO) 4522, dated September 13, 1968, the Secretary withdrew in part, subject to valid existing rights, certain lands containing deposits of oil shale "from appropriation under the United States mining laws, relating to metalliferous minerals." 33 FR 14349 (Sept. 24, 1968).

In its statement of reasons for appeal, appellant contends that the land which encompasses its mining claims is not subject to Exec. Order No. 5327 or PLO 4522 because the land contains no oil shale. Appellant notes that the trace minerals for which its claims were located are used in an oxide state for human nutrition, agriculture, and as a feed supplement for pets and livestock.

[1] Exec. Order No. 5327 was issued pursuant to the Act of June 25, 1910 (Pickett Act), as amended, 43 U.S.C. §§ 141-142 (1982). Section 2 of the Pickett Act, as amended, 43 U.S.C. § 142 (1982), provides in relevant part that "[a]ll lands withdrawn under the provisions of this section and section 141 of this title shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals."

Accordingly, Exec. Order No. 5327 did not withdraw land containing oil shale deposits from locations of mining claims for metalliferous minerals. See L. H. Grooms, 70 IBLA 228 (1983). However, Exec. Order No. 5327 did withdraw the land from "disposal," which included disposal under the mining laws pursuant to 30 U.S.C. § 22 (1982). 1/ Langdon H. Larwill, 54 I.D. 190 (1933). Moreover, PLO 4522 completed the withdrawal with respect to locations of mining claims by precluding appropriation of metalliferous minerals in certain areas. Thus, subsequent to January 27, 1967, the effective date of PLO 4522, land containing oil shale deposits as described in PLO 4522 was closed to all mineral entry. Charles H. Phillips, 78 IBLA 320 (1984); Kelly B. Hall, 4 IBLA 329 (1972).

It is well established that a mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void ab initio. John L. Grassmeier, 77 IBLA 156 (1983); B. W. Copeland, 75 IBLA 87 (1983), and cases cited therein.

Appellant argues that the land encompassed by its mining claims contains no oil shale and, thus, is not subject to Exec. Order No. 5327 and PLO 4522, which apply to lands containing deposits of oil shale. Exec. Order No. 5327 did not describe the affected land by legal subdivision. Accordingly, it applies only to lands actually containing oil shale deposits. We note that the Secretary initially approved maps designating lands containing oil shale deposits of recognized commercial importance in Colorado, Wyoming, and Utah, but concluded that other lands found to be valuable for oil shale were also withdrawn by Exec. Order No. 5327. Withdrawal of Oil Shale Lands - Executive Order of April 15, 1930, 53 I.D. 127 (1930). In Dale J. Merrell, A-30527 (May 20, 1966), at page 2, the Assistant Solicitor held that in order to be affected by Exec. Order No. 5327, there need only be "a finding that land is underlain by deposits of oil shale," regardless of value. Accordingly, the

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1/ Despite the fact that Exec. Order No. 5327 is worded as a temporary withdrawal, it was expressly made subject to termination only upon revocation "by the President or by act of Congress." Accordingly, in the absence of either action, the order has continuing vitality. Mecham v. Udall, 369 F.2d 1 (10th Cir. 1966).

Board has consistently held that lands are withdrawn under Exec. Order No. 5327 where the Geological Survey has classified them as containing deposits of oil shale. Thomas E. Gaynor, 24 IBLA 320 (1976); Heath B. Fowler, 8 IBLA 376 (1972).

The record contains no evidence that the land covered by appellant's mining claims is classified as containing deposits of oil shale. However, PLO 4522 operates as a presumptive finding that the land described therein contains deposits of oil shale. It applies by its terms to lands containing oil shale deposits "in the following described areas." 33 FR 14349 (Sept. 24, 1968). In effect, PLO 4522 to a certain extent did away with the uncertainty as to which land was affected by Exec. Order No. 5327, as well as broadening the scope of that withdrawal to affect the location of mining claims for metalliferous minerals.

The land covered by appellant's mining claims is specifically included in PLO 4522, i.e., secs. 27, 28, 33, and 34, T. 16 S., R. 1 W., Salt Lake meridian, Utah, and secs. 4 and 5, T. 17 S., R. 1 W., Salt Lake meridian, Utah. See 33 FR 14351 (Sept. 24, 1968). Therefore, by virtue of Exec. Order No. 5327 and PLO 4522, the land was withdrawn from all mineral entry on the date appellant located its mining claims. BLM properly declared appellant's mining claims null and void ab initio.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

R. W. Mullen  
Administrative Judge

